IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.786 OF 2005

Shri Lalsa Ramnath Pasi & ors. Appellants

Vs.

Additional Collector (ENC)
Mumbai Suburban District & anr. Respondents

Mr.Girishkumar V. Pandya for appellants.
Mr.M.M.Vashi for respondents.

CORAM: B.H.MARLAPALLE,J.
August 09, 2005.

ORAL ORDER:

1. Heard Mr.Pandya, the learned counsel for the appellants who are the plaintiffs in S.C. Suit No.214 of 2005. This suit was filed on or about 14-1-2005 with the following prayer:

> "(a) That the Defendants, their servants, agents, Officers and any person or persons claiming through them be restrained by an order of permanent Injunction from demolishing the Plaintiffs' Huts/Rooms Nos.172, 213, 154, 176, 219, 145, 162, 170, 285, 789, 296, 280, 281, 473, 404, 403, 400, 398, 377, 375 situated on the Plot of Land bearing Survey No.263(Part), C.T.S. No.6-A (Part), Charkop, Kandivali (West), Mumbai 400 067, otherwise than by due process of law."

2. Notice of Motion No.445 of 2005 was moved in the said suit with verbatim the same prayer as is

made in the main suit except the words "permanent injunction" and this notice of motion has been decided and the order of ad-interim relief passed earlier has been vacated by the impugned order dated 2207-2005 passed by the learned Judge of the City Civil Court at Mumbai. The suit is still pending along with the Notice of Motion.

3. Before the suit was moved before the trial Court notices were issued by the respondent no.1 to the appellants under section 33 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short "the Slum Area Improvement Act") sometime in April 2004 and these notices were challenged by 16 gala holders before the Divisional Commissioner, Konkan Division by way of separate appeals. These appeals were allowed and the cases were remanded to the respondent no.1 for fresh enquiry sometime in August 2004. The order of the lower Appellate authority came to be challenged before this Court in a writ petition which has been admitted and the impugned order has been stayed. The respondent no.2 issued notices on 7-1-2005 informing the plaintiffs that they would have to vacate the present rooms/huts for rehabilitation and move to the

alternative accommodation as made available and, therefore, the plaintiffs approached the trial Court.

4. Initially the ad-interim stay was granted but on 22-7-2005 the defendant no.2 submitted before the Court through its learned Advocated that the alternative accommodation as per the Rules has been made available and the plaintiffs were required to move into the same by vacating the existing huts so that the entire area could be cleared and redeveloped as per the approval granted by the Competent Authority under the SRA Scheme. The trial Court noted that the plaintiffs have only an interest in stalling the entire work of the SRA scheme implementation. The trial Court also noted that there would not be any inconvenience to the plaintiffs by shifting to the alternative accommodation and, therefore, the earlier order of ad-interim relief was vacated.

5. The impugned order cannot be faulted with if regards be had to the SRA Scheme and the fact that the alternative accommodation has been made available to the plaintiffs. The learned counsel for the respondent no.2 has placed on record before this

Court a written undertaking which, inter alia, reads as under:

> "the 2nd Respondent makes a statement before this Hon'ble Court that the 2nd respondent will give temporary alternate accommodation to the eligible appellants and thereafter only the structures occupied by them will be demolished. The 2nd Respondent further gives an undertaking that all the eligible appellants will be given permanent alternate accommodation as per rules."

6. In the premises the challenge to the impugned order fails at the threshold and, therefore, the appeal is dismissed in limine.

(B.H.MARLAPALLE,J.)